**BUSINESS & LABOR**EXHIBIT NO. 8  
DATE 3-18-09  
BILL NO. 4B378

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**Senate Business and Labor Committee****House Bill 378****Freight Forwarders:**

HB 378 is in response to a proposed audit adjustment during an audit of Transportation Brokers in 2007. Workers' compensation auditors are wrongly concluding that brokers need to possess proof of insurance coverage for the motor carriers to whom they broker loads. Typically, auditors reach this conclusion based on their mistaken assumption that the broker is the principal contractor and that the motor carriers are thus subcontractors. As many states will hold the principal contractor liable for workers' compensation insurance coverage for the subcontractor's employees if the subcontractor fails to meet its insurance obligations, the auditors (although very few actually have taken this position over the years and I know of no such positions that have withstood legal challenge) are charging additional premiums to the brokers' policies to compensate for the perceived increased risk of exposure. As discussed more fully below, this argument rests upon a fundamental misunderstanding of the trucking industry and the role played by brokers in that industry.

Property brokers and freight forwarders are not principal contractors, nor are for-hire motor carriers to which they tender freight subcontractors. Instead, property brokers and freight forwarders contract with independent motor carriers to provide the actual movement of freight required by the brokers' customers. As such, the entities these auditors label "subcontractors" are in fact principal contractors with respect to the contractor drivers with whom they contract to physically haul the cargo. In other words, property brokers are not in that chain of liability as they occupy a wholly different market niche and perform a wholly different and discrete function. Property brokers operate in tandem with motor carriers, either functioning as a seller of the motor carrier's service or as a representative of the shippers of goods, the buyers of transportation services.

An appropriate analogy can be found in the insurance industry. A property broker is akin to an insurance broker. As noted above, a property broker represents either motor carriers or the shippers of freight. In the same way, insurance brokers represent either providers of insurance or buyers of insurance. Further, a property broker is not the overall assembler of the service and it does not face ultimate liability on account of that service.

HB 378 as amended would make this clear to auditors of the State Fund who do not understand the contracts of a freight forwarder. This would prevent Freight Forwarders from having to spend money to defend their position with the State Fund should this error ever occur again.

As stated in the hearing for HB 378 the only difference between the two is on has to insure the cargo for liability should it be destroyed.

To comply with the provisions of HB 283 of this session I have provided the following information:

**Number of employees who would be exempt.** We believe that number to be zero as it is a contract for service rendered that is in question. Many of the people who carry out this contract never set foot in Montana.

**Number of Freight Forwarders in Montana:** Currently there are five companies registered as Freight Forwarder who are active in Montana and another 11 who are on the inactive list.

**Responsible party for cost of injury;** The employees of the freight forwarder are covered by the Freight Forwarder that they work for. Coverage for shippers employees are covered by the shipper and coverage of the motor carriers employee are covered by the motor carrier or if such driver is an IC by themselves.

**Potential liability** should be no different than it is today as these contracts are not covered by work comp in any other state.

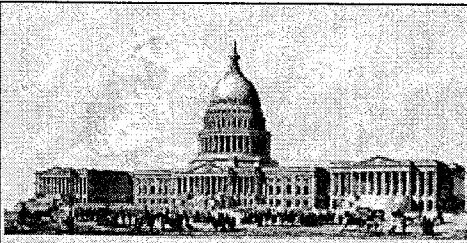
**State Payroll** no change as all employees of each company would still pay as they do under existing law.

Again we would like to state that this is an issue of mistaken audit results by the Workers Compensation Division. Passage of this bill will clarify that brokerage and freight forwarding contracts are just that contracts that involve no exposure to work comp liability. We could go the long way around this and wait for a case to be made that this contract is an employee, but as in the other 49 states where it is not considered an employee it would be an expensive proposition for both the State Fund and the company involved.

If the State Fund were to subject these contracts to Work Comp, Montana would be the only state to do so. Most likely these companies who already have offices in other states would see fit to move their employees to those locations to make a smaller burden on their business.

Freight Forwarder. Transaction. Freight forwarder gets a phone call from someone in New Jersey saying they are hauling a load to Montana, are there any loads to get me back to New Jersey available in Montana. If so they write up a contract if not he calls someone else. This may happen hundreds of times in a day and those carriers from out of state who are not subject to MT law will not have, nor will they have time to get an exemption. If declared employees or subject to MT IC laws this type of business would probably cease in Montana.

Barry Stang



TITLE 49 > SUBTITLE IV > PART B > CHAPTER 131 > § 13102

## § 13102. Definitions

In this part, the following definitions shall apply:

- (1) Board.**— The term "Board" means the Surface Transportation Board.
- (2) Broker.**— The term "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.
- (3) Carrier.**— The term "carrier" means a motor carrier, a water carrier, and a freight forwarder.
- (4) Contract carriage.**— The term "contract carriage" means—
  - (A)** for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and
  - (B)** for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101 (b).
- (5) Control.**— The term "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—
  - (A)** common directors, officers, stockholders, a voting trust, or a holding or investment company, or
  - (B)** any other means.
- (6) Foreign motor carrier.**— The term "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)—
  - (A)**
    - (i)** that is domiciled in a contiguous foreign country; or
    - (ii)** that is owned or controlled by persons of a contiguous foreign country; and
  - (B)** in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by commercial motor vehicle (as defined in section 31132) under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

**(7) Foreign motor private carrier.**— The term "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)—

**(A)**

**(i)** that is domiciled in a contiguous foreign country; or

**(ii)** that is owned or controlled by persons of a contiguous foreign country; and

**(B)** in the case of a person that is not a motor private carrier, that provides interstate transportation of property by commercial motor vehicle (as defined in section 31132) under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

**(8) Freight forwarder.**— The term "freight forwarder" means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

**(A)** assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

**(B)** assumes responsibility for the transportation from the place of receipt to the place of destination; and

**(C)** uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

**(9) Highway.**— The term "highway" means a road, highway, street, and way in a State.

**(10) Household goods.**— The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

**(A)** arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

**(B)** arranged and paid for by another party.

**(11) Household goods freight forwarder.**— The term "household goods freight forwarder" means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

**(12) Household goods motor carrier.**—

**(A) In general.**— The term "household goods motor carrier" means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

**(i)** Binding and nonbinding estimates.

**(ii)** Inventorying.

**(iii)** Protective packing and unpacking of individual items at personal residences.

**(iv)** Loading and unloading at personal residences.

**(B) Inclusion.**— The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

**(C) Limited service exclusion.**— The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

**(13) Individual shipper.**— The term "individual shipper" means any person who—

**(A)** is the shipper, consignor, or consignee of a household goods shipment;

**(B)** is identified as the shipper, consignor, or consignee on the face of the bill of lading;

**(C)** owns the goods being transported; and

**(D)** pays his or her own tariff transportation charges.

**(14) Motor carrier.**— The term "motor carrier" means a person providing commercial motor vehicle (as defined in section 31132) transportation for compensation.

**(15) Motor private carrier.**— The term "motor private carrier" means a person, other than a motor carrier, transporting property by commercial motor vehicle (as defined in section 31132) when—

**(A)** the transportation is as provided in section 13501 of this title;

**(B)** the person is the owner, lessee, or bailee of the property being transported; and

**(C)** the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

**(16) Motor vehicle.**— The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

**(17) Noncontiguous domestic trade.**— The term "noncontiguous domestic trade" means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

**(18) Person.**— The term "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

**(19) Pre-arranged ground transportation service.**— The term "pre-arranged ground transportation service" means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

**(20) Secretary.**— The term "Secretary" means the Secretary of Transportation.

**(21) State.**— The term "State" means the 50 States of the United States and the District of Columbia.

**(22) Taxicab service.**— The term "taxicab service" means passenger transportation in a motor vehicle having a capacity of not more than 8

passengers (including the driver), not operated on a regular route or between specified places, and that—

(A) is licensed as a taxicab by a State or a local jurisdiction; or

(B) is offered by a person that—

(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

(ii) does not primarily provide transportation to or from airports.

**(23) Transportation.**— The term “transportation” includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

**(24) United states.**— The term “United States” means the States of the United States and the District of Columbia.

**(25) Vessel.**— The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

**(26) Water carrier.**— The term “water carrier” means a person providing water transportation for compensation.

Amendments to House Bill No. 567  
3rd Reading Copy

Requested by Representative Jon Sonju

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo  
March 18, 2009 (8:02am)

1. Page 9, line 25.

**Following:** "franchisee"**Insert:** "or another new motor vehicle dealer of the franchisor in  
the area"

2. Page 9, line 28.

**Following:** "(8)"**Insert:** "or another new motor vehicle dealer of the franchisor in  
the area"

3. Page 14, line 21 through line 22.

**Following:** "dealer"**Strike:** "1" on line 21 through the first "dealer," on line 22

- END -